

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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OCT - 4 2004

Federal Communications Commission
Office of the Secretary

In the Matter of)

)
Amendment of Section 73.606(b),
Table of Allotments, TV Broadcast Stations;
and 73.622(b), Table of Allotments,
Digital Broadcast Television Stations
(Columbia and Edenton, NC))

MM Docket No. 04-289
RM-10802

To: Chief, Video Division
Media Bureau

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COMMENTS

Hampton Roads Educational Telecommunications Association, Inc. ("Hampton Roads"), by its attorneys, provides these comments in response to the *Notice of Proposed Rulemaking* in the referenced docket, DA 04-2396 (released August 6, 2004) ("*NPRM*").¹ In the *NPRM*, the Video Division requests comment on a proposal by the University of North Carolina ("UNC") to amend the Table of Allotments, 47 C.F.R. § 73.606(b), to reallocate Channel *2, Columbia, North Carolina, currently used by UNC's noncommercial educational station WUND-TV, to Edenton, North Carolina.²

As shown below, UNC's proposal is squarely inconsistent with the FCC's policies. It is a blatant grab for satellite viewers and potential funding in Hampton Roads' market at the expense of local transmission service in WUND-TV's city of license. The proposal should therefore be denied.

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¹ *In re Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations, and Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Columbia and Edenton, North Carolina)*, Notice of Proposed Rulemaking, DA 04-2396 (Released Aug. 6, 2004).

² UNC's proposal was set forth in a Petition for Rulemaking filed July 31, 2003 ("Petition"). The proposal would also amend the DTV Table of Allotments to move Channel *20 from Columbia to Edenton.

I. BACKGROUND

The original allotment of Channel *2 to Columbia, North Carolina was made in April 1964 at the request of the University of North Carolina. UNC applied for and was awarded the channel, and it has remained the sole licensee of Station WUND-TV.³ UNC petitioned for the channel to be allotted to Columbia because that community would serve as “an important link in [the then-proposed] state-wide educational television network.”⁴ The Commission noted when it granted UNC’s request that the placement of the channel in Columbia would “meet a real need as a source of educational programming for both schools and the general public” in that community.⁵ Similarly, the Commission noted with approval that granting the requested allotment to Columbia would make possible the community’s first and only local television station.⁶ After nearly four decades of service to its original community of license, WUND-TV Channel *2 remains the sole television station in Columbia, North Carolina.

On July 31, 2003, UNC filed the Petition to specify a new community of license for WUND-TV and WUND-DT. UNC requests and the *NPRM* now seeks comment on an amendment of the NTSC and DTV Tables of Allotments, 47 C.F.R. § 73.606(b) and § 73.622(b), removing the WUND-TV/DT allotments from Columbia, North Carolina, moving them to Edenton, North Carolina, and modifying the WUND-TV and WUND-DT licenses accordingly.

Hampton Roads opposes the allotment changes. Hampton Roads is licensee of noncommercial educational station WHRO-TV, Hampton-Norfolk, Virginia. Station WHRO-TV serves the Tidewater area of southeastern Virginia and northeastern North Carolina, and its local ties to these areas are extensive. Hampton Roads was formed and is controlled by 14

³ See Federal Communications Commission, *Table of Assignments, Television Broadcast Stations (Columbia, North Carolina)*, 29 Fed. Reg. 4721 (Apr. 2, 1964). For the convenience of the Commission, a copy of the FCC’s original allocation decision is attached.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

public school system members in the Tidewater/Hampton Roads area (which includes communities on the peninsula as far west as Williamsburg and north through the Virginia Northern Neck and the Eastern Shore). The school system members elect the board of directors of Hampton Roads, and provide input regarding its educational mission. Hampton Roads' board includes not only educators, but others drawn from the community, including leaders from local financial institutions, law firms, transportation firms, the print media and the military. Hampton Roads is dependent on local support—over 80% of its funding is locally raised. Unlike UNC, which is a large public educational institution governed by a state-wide board responsible for far-flung operations, Hampton Roads operates as an independent licensee whose support from the community is crucial to its survival and ability to serve the public interest. Therefore, UNC's proposed move into Hampton Roads' market, with the prospect of its siphoning off satellite viewers and their funding in areas not served by WUND-TV, threatens to undermine Hampton Roads' support at this critical juncture in the history of public television.

II. ARGUMENT

A. Removal of Channel *2 from Columbia Would Deprive the Community of Its Sole Television Station and Would Not Result In Any Additional Reception Service

The Commission has continually upheld the principle that a community which possesses only one television station must not be stripped of its allotment absent compelling evidence that the Commission's larger allotment goals will be frustrated by keeping the station in the community.⁷ UNC's petition is squarely inconsistent with this fundamental principle. As the

⁷ See *Amendment of the Commission's Rules regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Memorandum Report and Order, 5 FCC Red 7094 (Released Nov. 30, 1990) ("Change of Community MO&O"). To Hampton Roads' knowledge, the Commission has never removed a television allotment from a community on the basis that the community had shrunk in size. Research revealed only one previous case where a sole TV allotment was even proposed to be removed, *In re Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (North Pole and Plattsburgh, New York)*, Notice of Proposed Rulemaking, DA 99-1235 (Released July 2, 1999), where the Commission questioned whether the "community" of license was a

Commission pointed out in the *NPRM*, Edenton's gain of a first local transmission service would be at the expense of Columbia, which would lose its first and only television station.⁸ In its Petition, UNC argued that the removal of Columbia's sole *transmission* service can be excused because the community will still retain the WUND-TV *reception* service. UNC noted that the allocation change would not alter the location of the station's studios or transmitter. However, the Commission does not equate transmission with reception service, and it has not previously credited this argument. For example, in the *Bessemer* case,⁹ the Commission dealt with nearly the same situation as presented by UNC's petition. There, the Commission denied the request of a licensee seeking to change its community of license while leaving its transmission tower and studio in the same place. The Commission stated in unambiguous terms that the community at issue in *Bessemer* possessed "a legitimate expectation of continued local *transmission* service."¹⁰

This result follows the policy established by the Commission in its 1989 *Report and Order*¹¹ modifying the rules for petitions to change the communities of license for television and radio broadcast services. The Change of Community R&O states that the Commission "will not allow any broadcaster to take advantage of [the revised change of community of license rules] if the effect would be to deprive a community of an existing service representing its *only local transmission service*."¹²

UNC does not and cannot demonstrate that the public interest supports removing the sole transmission service from Columbia. In the absence of a compelling showing that the public

community at all, given that there was no permanent post office, no schools, libraries, community organizations or local businesses, or any other indicia of community status. That case remains pending before the Commission.

⁸ See *NPRM*, *supra* note 1, at ¶ 6.

⁹ *In re Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Bessemer and Tuscaloosa, Alabama)*, Report and Order, 5 FCC Rcd 669 (Released Feb. 5, 1990) ("*Bessemer*").

¹⁰ *Id.* at ¶ 14 (emphasis added).

¹¹ *In re Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (Released June 15, 1989) ("*Change of Community R&O*").

¹² *Id.* at ¶ 28 (emphasis added).

interest will be better served by suspension or waiver of an FCC allotment rule, such a request will not be sustained by the Commission.

It is clear that merely adding some potential viewers is not sufficient basis to waive the FCC's allotment priorities. For example, in the *Pueblo* case, the Commission refused to grant the petitioners' request to approve a short-spaced allotment into an area already served by numerous stations, and that would have resulted in a net reception gain of only 5,324 viewers, noting that "such a slim public interest benefit . . . certainly does not meet the 'compelling need' standard to justify such an allotment."¹³ Of course, if the addition of five thousand viewers was too slight a gain in service in *Pueblo* to overcome the Commission's allocation rules, then the *zero* additional free, over-the-air viewers to be gained by UNC's proposal should likewise fail. In addition, it is worth noting that, as in *Pueblo*, UNC's proposal would add a station to an already well-served community at the expense of a community with few alternatives. As shown in the Engineering Statement of Joseph M. Davis, attached hereto, Edenton is within the Grade B "reception" contour of nine television stations, while Columbia is within the Grade B contour of only three—of which WUND-TV is one.¹⁴

UNC's waiver showing rests on the notion that the community change would increase WUND-TV's potential DBS subscriber base. However, at no time has the Commission interpreted "reception service" in this way, and for good reason: such an interpretation eliminates the distinction of free over-the-air broadcasting as a unique and valuable service separate from fee-based multichannel subscription services. Moreover, as noted by the Video Division in the

¹³ *In re Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Pueblo, Colorado)*, Memorandum Opinion and Order on Remand, FCC 99-162 (Released July 7, 1999).

¹⁴ See Engineering Statement of Joseph M. Davis, at 2. The Engineering statement also shows that both the Tidewater Market (the Norfolk-Portsmouth-Newport News DMA) and the Greenville-New Bern-Washington, NC DMA have ample transmission services overall—9 in Tidewater versus 10 in Greenville—thus negating that as a factor favoring reallocation of WUND-TV from one market to the next.

NPRM, reliance on population gains attributable to WUND-TV's carriage on DBS is too speculative to be considered.¹⁵ Given the lack of *any* public interest benefit to be gained by UNC's proposal, the Petition should therefore be denied.

B. Columbia and Edenton Are Separate Communities, Not Part of Any Wide-Sweeping Regional "Community"

UNC has argued that granting a change in WUND-TV's community of license does not actually require a change in the "community," on the theory that the entire 4,500 square mile area¹⁶ encompassing the land around North Carolina's Albemarle Sound and portions of southeastern Virginia is a "community" for Section 307(b) purposes. Although in the television context the Commission's definition of "community" has not been limited to political boundaries,¹⁷ it is not true that a "community" exists merely by virtue of a station's signal coverage or even geographical proximity. The analysis of whether any particular group of people in a given area qualifies as a "community" is a fact-intensive inquiry. The Commission has regularly "rejected claims of community status where a connection has not been shown between the political, social, and commercial organizations and the community in question."¹⁸ This "connection" is demonstrated by numerous methods of verification, including Census data, descriptions of local businesses and civic groups, and any other "evidence that the residents function as and conceive of themselves as a community around which their interests coalesce."¹⁹

Apart from the assertion that communities located in the region around Albemarle Sound occasionally shop and conduct business with each other, UNC offered no evidence that the area possesses the necessary indicia of a single community status required for Section 307(b)

¹⁵ NPRM, *supra* note 1, at ¶ 6.

¹⁶ An area of land roughly equal to the state of Connecticut (land area 4845 sq. mi.)

¹⁷ See, e.g., *Winter Park Communications, Inc. v. FCC*, 873 F.2d 347 (D.C. Cir. 1989).

¹⁸ *In re Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Columbia, California)*, Report and Order, 6 FCC Rcd 3292, ¶ 3 (Released June 3, 1991).

¹⁹ *In re Mighty-Mac Broadcasting Company*, 101 FCC 2d 303, ¶ 5 (Released June 26, 1985) (internal quotations and citations omitted).

analysis. The fact that people living in a certain geographic area tend to frequent local businesses is not sufficient to serve as indicia of community. The Commission stated that while “proximity results . . . in a degree of commercial intercourse and civic and political cooperation, such interaction is to be expected where the distances . . . are relatively small. It does not follow, however, that they are not communities separate and independent of each other for 307(b) purposes.”²⁰

UNC’s assertion of “community” falls far short of the required demonstration.²¹ In fact, there is ample evidence to the contrary: Edenton and Columbia are both the seats of their respective counties, and each possesses more than adequate indicia of community status for the purposes of Section 307(b). Although UNC claims that the Albemarle Sound is a unifying feature of the counties that surround it, quite the opposite is true. The Sound provides an effective barrier not as easily traversed as UNC suggests. Edenton and Columbia are separated by their counties, by the body of water stretching between them—even by separate Representatives to the United States Congress.²² In short, there is little to indicate that the enormous Albemarle Sound serves as anything other than a physical barrier between distinct communities located on either side.²³

²⁰ *In re Radio Greenbrier, Inc., Ronceverte, West Virginia*, 80 FCC 2d 107, ¶ 11 (Released Feb. 13, 1980).

²¹ See generally *Reeder v. FCC*, 865 F.2d 1298 (D.C. Cir. 1989); *In re Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Columbia, California)*, Report and Order, 6 FCC Rcd 3292 (Released June 3, 1991); *In re Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations (Naples, North Naples, and Immokalee, Florida)*, 41 Rad. Reg. 2d 1549 (Released Dec. 15, 1977).

²² See Congressional districting maps, available at <http://nationalatlas.gov/congdistprint.html#North%20Carolina> (last visited Sept. 1, 2003). Chowan County, the home of Edenton, and other counties falling west of the Sound are grouped into the First Congressional District, while the counties east and south along the coastline belong to the Third Congressional District.

²³ Going further, if the Commission were to find a large regional “community” encompassing Edenton, that community would look to the north—to the Tidewater area which is served by WHRO-TV, not to the south, across the expanse of Albemarle Bay. During a period in which North Carolina taxes remain significantly lower than Virginia taxes, and the cost of living is less, there is a substantial movement of Virginia citizens to live and retire in areas such as Edenton, which are just below the Virginia/North Carolina border. These people continue to shop in Virginia, and many continue to work in Virginia. In essence, the northeastern part of North Carolina above the

UNC has also argued that removal of the WUND-TV allotment is justified because Columbia is inadequate in size to serve as the station's community. This argument is equally unavailing. Columbia was enough of a community when UNC asked the Commission to allocate Channel *2 there in 1964. Little, other than UNC's desire to poach on the larger Tidewater/Hampton Roads market, and its strategy to do so using DBS carriage, has changed since then. While the number of people currently living in the town may be slightly smaller than the number living there in 1964, the change is not so great as to render Columbia a ghost town. UNC points out that there are 819 people living in Columbia at the present date,²⁴ a number not so drastically reduced from the thousand or so people living there in 1964 when the Commission made the allotment in the first place.²⁵ Columbia remains the county seat for Tyrell County and a living, vibrant community populated by families who still treat themselves as residents of Columbia. Furthermore, the net population growth for Tyrell County during the period 1990-2000 *increased* by 7.6%; the growth of Chowan County (home of Edenton) during the same period reveals an *identical* growth rate—7.6%.²⁶ A quick check to the local yellow pages reveals an active civic population: Columbia has its own local high school—*Columbia* High School, a county-run elementary school located within Columbia's borders, a public library on Columbia's Main Street, several bed-and-breakfast inns, a local chapter of Head Start, numerous state, county, and city government offices, two banks, two pharmacies (including one named *Columbia* Pharmacy), its own city post office ("Columbia Main Post Office"), six restaurants, and no less

Albemarle Sound is becoming a suburban annex to the Tidewater market, rather than gravitating to the areas (including Columbia) south of the Albemarle Sound.

²⁴ See UNC Petition. *supra* note 2, at 6.

²⁵ See Federal Communications Commission, *Table of Assignments, Television Broadcast Stations (Columbia, North Carolina)*, 29 Fed. Reg. 4721 (Apr. 2, 1964).

²⁶ 2 RAND McNALLY COMMERCIAL ATLAS AND MARKETING GUIDE 207-8 (2004).

than nineteen churches.²⁷ In short, there is ample evidence to show that Columbia is just as active a town as it has ever been, and that the residents of Columbia think and behave as though they were members of a *Columbia* community.

C. UNC Should Not Be Allowed to Thwart The Commission's Long-Established Principles in Allocating Stations

Section 307(b) of the Communications Act provides the statutory basis upon which the Commission makes its channel allotment decisions, stating in relevant part that “the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”²⁸ In fulfilling this mandate, the Commission tries to ensure not only that as many communities receive television signals as possible, but that as many different communities as possible serve as homes for television stations. In fact, the Commission has noted that, given the saturation of television signals generally, the goal of ensuring widespread distribution of facilities and transmission services is the only goal left to be accomplished: “there are virtually no populated areas of the country where our higher allotment priorities, such as first reception service, have not been attained. . . provision of first [transmission] service is the highest of our allotment priorities which remains in any significant degree unsatisfied.”²⁹

In the end, UNC's attempt to abandon Columbia in favor of Edenton is motivated solely on the grounds that doing so will allow WUND-TV to capture additional audience share in the Tidewater Market by invoking DBS carriage for “local” stations pursuant to the Satellite Home Viewer's Improvement Act of 2000 (SHVIA). UNC's assertions about Columbia being insufficiently small in size, and there being a “community” comprised of the region surrounding

²⁷ See generally Yellow Pages listings for Columbia, NC, available at <http://yp.bellsouth.com/> (last visited Sept. 9, 2004).

²⁸ 47 U.S.C. § 307(b) (2000).

²⁹ See Change of Community MO&O, *supra* note 7, at ¶ 16.

the Albemarle Sound, are little more than a smokescreen for a grab for additional viewers (and attendant fundraising dollars) in the Tidewater Market. UNC speaks of "gain" to viewers, but the true gain it seeks is not to the public, but rather to itself.

UNC's proposal to shoehorn WUND-TV into the Tidewater Market is a misuse of the process for changing community of license. The proposal does not "harmonize" DBS service with WUND-TV's Grade B contour coverage because Tidewater-market wide DBS carriage would exceed WUND-TV's Grade B contour. Instead, UNC seeks to increase viewers and fundraising dollars by wedging itself into a substantially larger DMA. Amazingly, UNC argues that making such a grab for additional viewers should be construed as a *positive* action that furthers the public interest. In so doing, UNC completely ignores the Commission's goal that as many diverse communities possess their own local television stations as is technologically feasible.

III. CONCLUSION

For the foregoing reasons, Hampton Roads respectfully requests that the Commission deny the petition filed by UNC for a change in the community of license of its TV and DTV stations WUND-TV and WUND-DT from Columbia, North Carolina to Edenton, North Carolina.

**HAMPTON ROADS EDUCATIONAL
TELECOMMUNICATIONS
ASSOCIATION, INC.**

By: Todd D. Gray
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September 27, 2004

Thursday, April 2, 1964

FEDERAL REGISTER

(9) Wright Brothers National Memorial, North Carolina. Wright Brothers National Memorial airstrip, located at Kili Devil Hills, North Carolina.

(39 Stat. 636; 16 U.S.C. 3)

STEWART L. UDALL,
Secretary of the Interior.

MARCH 27, 1964.

[F.R. Doc. 64-7207; Filed, Apr. 1, 1964;
8:47 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 15227; FCC 64-260]

PART 73—RADIO BROADCAST SERVICES

Table of Assignments, Television Broadcast Stations; Columbia, N.C.

In the matter of amendment of § 73.606, Table of Assignments, Television Broadcast Stations (Columbia, North Carolina), Docket No. 15227, RM-437.

1. The Commission has before it for its consideration its notice of proposed rule making, released December 3, 1963 (FCC 63-1087), proposing that Channel 2 be assigned to Columbia, North Carolina, and reserved as a noncommercial educational station in accordance with the request of the University of North Carolina, Consolidated Office (petitioner).

2. No comments or reply comments were received.

3. Columbia, North Carolina, with a population of 1,099, is located in Tyrell County. That county's population according to the 1960 U.S. Census is 4,520. At the present time Columbia has no television channel assigned to it. Petitioner's proposed Channel 2 would serve this community and the surrounding area as an important link in a proposed state-wide educational television network. It is expected that the channel will meet a real need as a source of educational programming for both schools and the general public. There are no engineering objections to the assignment.

4. In view of the above the Commission is of the opinion that it is in the public interest to adopt the proposal set forth in its notice.

5. Authority for the amendment adopted herein is contained in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

6. It is ordered, That effective May 4, 1964, the Table of Assignments contained in § 73.606 of the Commission's rules and

regulations is amended to read as follows in respect to the community named:

City	Channel No.
Columbia, N.C.	*2

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 303, 307, 48 Stat. 1082, 1083; 47 U.S.C. 303, 307)

Adopted: March 25, 1964.

Released: March 27, 1964.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-3184; Filed, Apr. 1, 1964;
8:45 a.m.]

[Docket No. 15144; FCC 64-261]

PART 73—RADIO BROADCAST SERVICES

Table of Assignments, Television Broadcast Stations; Waycross, Ga.

In the matter of amendment of § 73.606, Table of Assignments, Television Broadcast Stations (Sacramento, San Francisco-Oakland, Santa Barbara and Watsonville, Calif.; Waycross, Ga.; Keene and Littleton, N.H.; Atlantic City, N.J.; Athens and Chattanooga, Tenn.), Docket No. 15144, RM-372, RM-373, RM-397, RM-398, RM-404, RM-405, RM-432, RM-461.

1. The Commission has before it for consideration its notice of proposed rule making, released August 2, 1963 (FCC 63-781), proposing, inter alia, that Channel 8+ be reserved as a noncommercial educational station in Waycross, Georgia, in accordance with the request of the Georgia State Board of Education, licensee of the Channel 8+ station, WXGA-TV.

2. A brief supporting comment was received from the National Educational Television and Radio Center.

3. Waycross, Georgia, with a population of 20,944, is located in Ware County. That county's population according to the 1960 U.S. Census is 34,219. At the present time Channels 8+ and 16 are assigned to Waycross. There is no authorization outstanding, nor are there applications pending, for the use of Channel 16.

4. The Georgia State Board of Education received a construction permit for Channel 8+ on April 9, 1959. On July 24, 1962, after some delay in construction, it was granted a license for WXGA-TV, on that channel, which it has operated to this date. It now requests that Channel 8+ be formally reserved for educational use. Operating on a reserved

¹ In Docket No. 13419 the Commission denied a request by petitioner identical to the subject request due to uncertainty caused by petitioner's delay in commencing construction. In our Report and Order (FCC 60-616; Mimeo No. 68108) adopted May 26, 1960, released May 27, 1960, we expressly pointed out petitioner's right to request consideration of its proposal at a time after its station was constructed and put into operation.

² Commissioner Hyde absent.

channel would enable petitioner to apply for Federal funds.¹

5. In view of the nature of WXGA-TV's operation and the fact that the grant of petitioner's request will enable it to apply at an early date for Federal aid from the Department of Health, Education, and Welfare, the Commission is of the opinion that it is in the public interest to adopt the proposal set forth in its Notice in respect to Channel 8+ in Waycross, Georgia.

6. Authority for the amendment adopted herein is contained in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

7. It is ordered (in accordance with the matters considered in RM-461). That, effective May 4, 1964, the Table of Assignments contained in § 73.606 of the Commission's rules and regulations is amended to read as follows in respect to the community named:

City	Channel No.
Waycross, Ga.	*8+, 16

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 303, 307, 48 Stat. 1082, 1083; 47 U.S.C. 303, 307)

Adopted: March 25, 1964.

Released: March 27, 1964.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64-3185; Filed, Apr. 1, 1964;
8:45 a.m.]

[Docket No. 15224; FCC 64-244]

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Frequencies; Corpus Christi, Texas

In the matter of amendment of Parts 81 and 83 of the Commission's rules to make the frequency pair 2538 kc/s (coast)—2142 kc/s (ship) available for assignment in the vicinity of Corpus Christi, Texas, Docket No. 15224, RM-460.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 25th day of March 1964:

The Commission having under consideration the above-captioned matter:

It appearing, that in accordance with the requirements of section 4 (a) and (b) of the Administrative Procedure Act, notice of proposed rule making in this matter which made provision for the submission of written comments by interested parties was published in the FEDERAL REGISTER on December 10, 1963 (28 F.R. 13370), and the period for filing comments has now expired: and

¹ Aid from the Department of Health, Education, and Welfare cannot be applied for unless the application submitted is accompanied by an FCC Notice of Acceptance for Filing of an application for a construction permit for a station to operate on an educationally reserved channel (with some exceptions).

² Commissioner Hyde absent.

¹ Petitioner has stated that the proposed North Carolina educational network " . . . will be so engineered as to permit simultaneous broadcast on all of the proposed transmitters, split networks, introduction of programs at individual transmitters, addition of new production centers, interconnection with other educational networks which may be established in the future, and other forms of potential programming and engineering expansion for future needs"

ENGINEERING STATEMENT

prepared for

Hampton Roads Educational Telecommunications Association, Inc.

MB Docket 04-289

This engineering statement has been prepared on behalf of *Hampton Roads Educational Telecommunications Association, Inc.* (“HRETA”), in support of *Comments* in a Notice of Proposed Rulemaking (“NPRM”), Media Bureau Docket 04-289.¹ The subject docket proposes to change the principal community for WUND-TV (Facility ID 69292, analog Ch. 2, digital Ch. 20) from Columbia, NC to Edenton, NC, as requested by the *University of North Carolina*, licensee of WUND-TV.

The proposed change in principal community involves a change in Designated Market Area (“DMA”²). Columbia is within the Greenville - New Bern - Washington, NC DMA, while Edenton is within the Norfolk - Portsmouth - Newport News, VA DMA (the “Tidewater” market). In the subject NPRM, the Commission requests the petitioner to supply certain analyses regarding transmission and reception service within the Tidewater market, as well as reception services available within Columbia and Edenton. Such data is provided herein, prepared on behalf of HRETA

Transmission Services

A listing of the transmission services within both DMAs is provided in the attached **Table 1**. This table identifies each analog television station whose principal community is located within each DMA. **Figure 1** depicts the boundaries of each DMA and the transmitter site location of each television station.

¹See *Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations, and Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Columbia and Edenton, North Carolina)*, MB Docket No. 04-289, RM 10802, released August 6, 2004.

²“DMA” is a registered trademark of Nielsen Media Research, Inc.

ENGINEERING STATEMENT

(page 2 of 3)

Reception Services - Both DMA's

The Grade B contour for each analog television station providing any reception service within the Norfolk - Portsmouth - Newport News, VA DMA is depicted in **Figure 2**. The accompanying **Table 2** provides a listing of each identified television station having Grade B contour coverage within any part of the Norfolk - Portsmouth - Newport News, VA DMA. Similarly, **Figure 3** and **Table 3** provide a map and accompanying listing of television stations which provide Grade B contour coverage within the Greenville - New Bern - Washington, NC DMA.

Reception Services - Edenton and Columbia, NC

Attached as **Figure 4** is a map which provides the boundaries of Columbia and Edenton, NC (2000 U.S. Census data), the DMA boundaries, and television station Grade B contours which cover any part of Columbia or Edenton. **Figure 4A** provides a detail of this map, in the area of interest at Columbia and Edenton. As demonstrated thereon, Columbia has only three television Grade B "reception" services (WUND-TV, WSKY-TV, and WTKR).

All (100%) of Edenton is within the Grade B contour of eight television stations (WUND-TV, WSKY-TV, WTKR, WITN-TV, WNCT-TV, WVEC-TV, WAVY-TV, and WPXV). Additionally, a portion of Edenton is also within the Grade B contour of a ninth station, WTVZ-TV. According to 2000 Census data, Edenton involves an area of 13.0 sq. km and a population of 5394 persons. The portion of Edenton covered by the Grade B contour of WTVZ-TV (a total of nine television stations) is 8.4 sq. km and 4956 people (64.6 percent of the total area and 91.9 percent of the total population).

Contour Methodology

In preparing the attached maps and tables, pertinent station data were extracted from the Commission's engineering databases. For each television station, pertinent data for determining the distances to the Grade B contour included the antenna elevation above mean sea level, geographic coordinates, effective radiated power, and, where appropriate, directional antenna patterns. The


ENGINEERING STATEMENT

(page 3 of 3)

requisite contours distances were determined using digitized, 3 arc-second terrain data along radials spaced every degree from the transmitter site and an implementation of the Commission's TVFMFS computer program which simulates the FM and TV propagation curves. Field strength values per §73.683(a) were employed for the illustrated Grade B contour levels.³ The distances to the pertinent contours were then fed into a GIS mapping program which was used to generate the attached maps and analyze the results.

Certification

The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief.


Joseph M. Davis, P.E.
September 23, 2004

Cavell, Mertz & Davis, Inc.
7839 Ashton Avenue
Manassas, VA 20109
703-392-9090

List of Attachments

Table 1	DMA Transmission Services - Facility Listing
Figure 1	Transmission Services - Both DMAs
Figure 2	Reception Services - Norfolk-Portsmouth-Newport News, VA DMA
Table 2	Reception Services Facility Listing - Norfolk-Portsmouth-Newport News, VA DMA
Figure 3	Reception Services - Greenville-New Bern-Washington, NC DMA
Table 3	Reception Services Facility Listing - Greenville-New Bern-Washington, NC DMA
Figure 4	Reception Services - Grade B Contours - In Edenton and Columbia, NC
Figure 4A	Detail - Reception Services - Grade B Contours - In Edenton and Columbia, NC

³Grade B signal levels are 47 dB μ for Channels 2-6, 56 dB μ for Channels 7-13, and 80 dB μ for Channels 14-69.

Table 1
DMA TRANSMISSION SERVICES - FACILITY LISTING
Hampton Roads Educational Telecommunications Association, Inc.
MB Docket 04-289

Norfolk - Portsmouth - Newport News, VA DMA

<u>Call</u>	<u>Ch.</u>	<u>Community</u>
WTKR(TV)	3	Norfolk, VA
WSKY-TV	4	Manteo, NC
WAVY-TV	10	Portsmouth, VA
WVEC-TV	13	Hampton, VA
WHRO-TV	15	Hampton-Norfolk, VA
WGNT(TV)	27	Portsmouth, VA
WTVZ-TV	33	Norfolk, VA
WVBT(TV)	43	Virginia Beach, VA
WPXV(TV)	49	Norfolk, VA

Greenville - New Bern - Washington, NC DMA

<u>Call</u>	<u>Ch.</u>	<u>Community</u>
WUND-TV	2	Columbia, NC
WITN-TV	7	Washington, NC
WFXI(TV)	8	Morehead City, NC
WNCT-TV	9	Greenville, NC
WCTI-TV	12	New Bern, NC
WYDO(TV)	14	Greenville, NC
WUNM-TV	19	Jacksonville, NC
WUNK-TV	25	Greenville, NC
WPXU-TV	35	Jacksonville, NC
WEPX(TV)	38	Greenville, NC

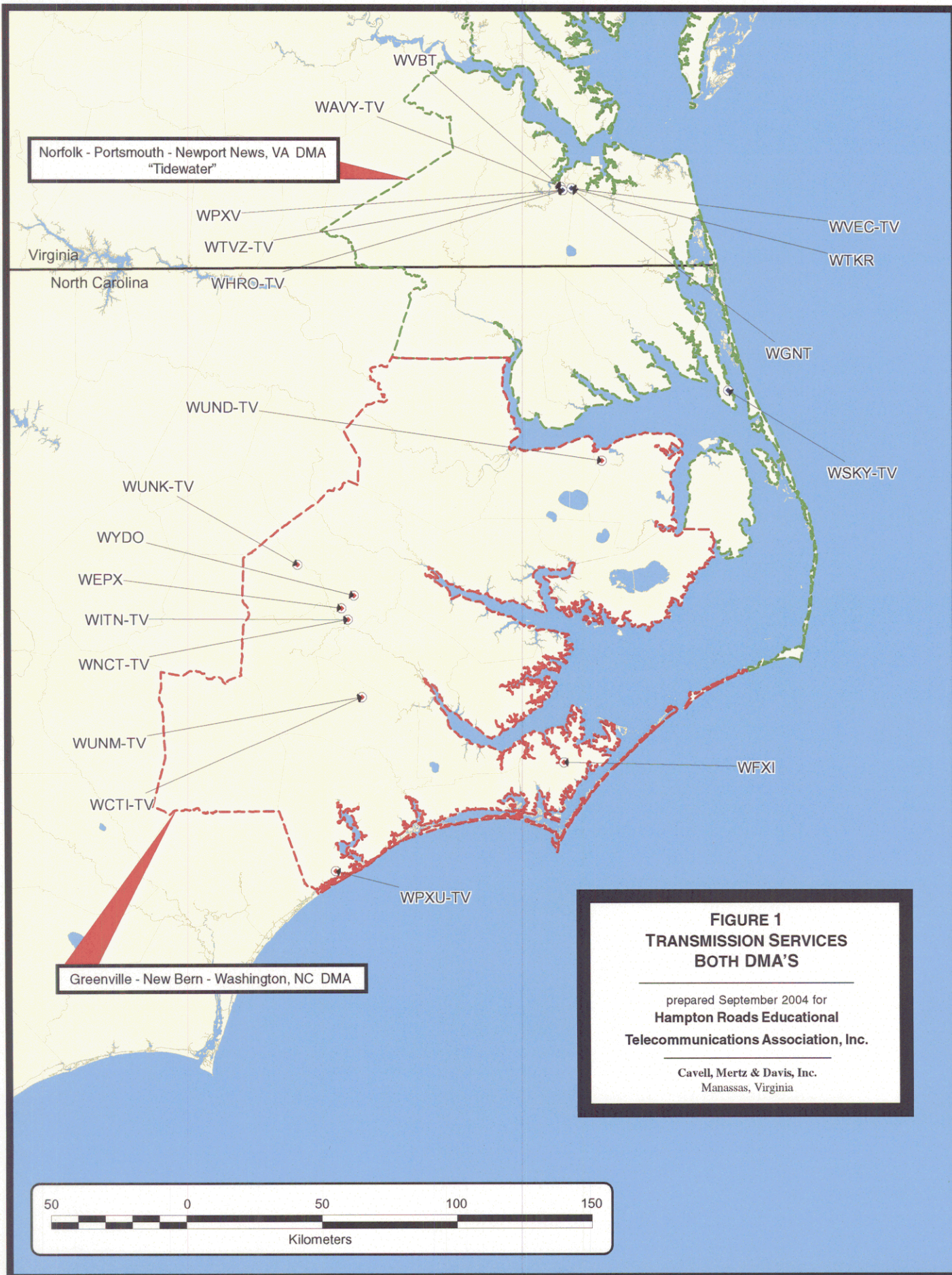
Table 2
RECEPTION SERVICES - FACILITY LISTING
NORFOLK - PORTSMOUTH - NEWPORT NEWS, VA DMA
 prepared for
Hampton Roads Educational Telecommunications Association, Inc.
 MB Docket 04-289

<u>Call</u>	<u>Ch.</u>	<u>Community</u>	<u>File Number</u>	<u>Facility ID</u>
WAVY-TV	10	PORTSMOUTH, VA	BMLCT-19960821KE	71127
WBOC-TV	16	SALISBURY, MD	BLCT-20000918ABE	71218
WCVE-TV	23	RICHMOND, VA	BLET-20030520AKD	9987
WCVW(TV)	57	RICHMOND, VA	BLET-19780828IU	9989
WFXI(TV)	8	MOREHEAD CITY, NC	BLCT-19891117KI	37982
WGNT(TV)	27	PORTSMOUTH, VA	BMLCT-20020718AAB	9762
WHRO-TV	15	HAMPTON-NORFOLK, VA	BLET-19980608KE	25932
WITN-TV	7	WASHINGTON, NC	BLCT-19791023KE	594
WMDT(TV)	47	SALISBURY, MD	BLCT-20030703ABJ	16455
WNCT-TV	9	GREENVILLE, NC	BLCT-19801023KI	57838
WPXV(TV)	49	NORFOLK, VA	BLCT-20020225AAQ	67077
WRIC-TV	8	PETERSBURG, VA	BMLCT-20021218ABE	74416
WRLH-TV	35	RICHMOND, VA	BLCT-19870930LA	412
WSKY-TV	4	MANTEO, NC	BLCT-20011018AGX	76324
WTKR(TV)	3	NORFOLK, VA	BMLCT-19850130KI	47401
WTVR-TV	6	RICHMOND, VA	BLCT-193	57832
WTVZ-TV	33	NORFOLK, VA	BLCT-20030415ACC	40759
WUND-TV	2	COLUMBIA, NC	BLET-20000614ACB	69292
WUNP-TV	36	ROANOKE RAPIDS, NC	BLET-19861120KI	69397
WUPV(TV)	65	ASHLAND, VA	BMLCT-20010320ACB	10897
WVBT(TV)	43	VIRGINIA BEACH, VA	BLCT-19960531KF	65387
WVEC-TV	13	HAMPTON, VA	BLCT-19990811LF	74167
WWBT(TV)	12	RICHMOND, VA	BMLCT-19861014KI	30833

Table 3
RECEPTION SERVICES - FACILITY LISTING
GREENVILLE - NEW BERN - WASHINGTON, NC DMA

prepared for
Hampton Roads Educational Telecommunications Association, Inc.
 MB Docket 04-289

<u>Call</u>	<u>Ch.</u>	<u>Community</u>	<u>File Number</u>	<u>Facility ID</u>
WAVY-TV	10	PORTSMOUTH, VA	BMLCT-19960821KE	71127
WBTW(TV)	13	FLORENCE, SC	BMLCT-20010420ABM	66407
WCTI-TV	12	NEW BERN, NC	BLCT-19991220ACA	18334
WECT(TV)	6	WILMINGTON, NC	BLCT-19810729KF	48666
WEPX(TV)	38	GREENVILLE, NC	BLCT-19981221KH	81508
WFXI(TV)	8	MOREHEAD CITY, NC	BLCT-19891117KI	37982
WGNT(TV)	27	PORTSMOUTH, VA	BMLCT-20020718AAB	9762
WHRO-TV	15	HAMPTON-NORFOLK, VA	BLET-19980608KE	25932
WITN-TV	7	WASHINGTON, NC	BLCT-19791023KE	594
WLFL(TV)	22	RALEIGH, NC	BLCT-19861113KR	73205
WNCN(TV)	17	GOLDSBORO, NC	BLCT-20001023ADX	50782
WNCT-TV	9	GREENVILLE, NC	BLCT-19801023KI	57838
WPXU-TV	35	JACKSONVILLE, NC	BLCT-20030926APA	37971
WPXV(TV)	49	NORFOLK, VA	BLCT-20020225AAQ	67077
WRAL-TV	5	RALEIGH, NC	BLCT-19901114KF	8688
WRAY-TV	30	WILSON, NC	BLCT-19981014KE	10133
WRAZ(TV)	50	RALEIGH, NC	BLCT-19950925KE	64611
WRDC(TV)	28	DURHAM, NC	BLCT-19910116KE	54963
WRPX(TV)	47	ROCKY MOUNT, NC	BLCT-19960709KN	20590
WSFX-TV	26	WILMINGTON, NC	BLCT-20000120AAF	72871
WSKY-TV	4	MANTEO, NC	BLCT-20011018AGX	76324
WTKR(TV)	3	NORFOLK, VA	BMLCT-19850130KI	47401
WTVD(TV)	11	DURHAM, NC	BLCT-20010709ACP	8617
WTVZ-TV	33	NORFOLK, VA	BLCT-20030415ACC	40759
WUNC-TV	4	CHAPEL HILL, NC	BLET-19950809KE	69080
WUND-TV	2	COLUMBIA, NC	BLET-20000614ACB	69292
WUNJ-TV	39	WILMINGTON, NC	BLET-19891220KE	69332
WUNK-TV	25	GREENVILLE, NC	BLET-19920116KF	69149
WUNM-TV	19	JACKSONVILLE, NC	BLET-20020607AAA	69444
WUNP-TV	36	ROANOKE RAPIDS, NC	BLET-19861120KI	69397
WUNU(TV)	31	LUMBERTON, NC	BLET-19960828KF	69416
WUVC-TV	40	FAYETTEVILLE, NC	BLCT-19860630KE	16517
WVBT(TV)	43	VIRGINIA BEACH, VA	BLCT-19960531KF	65387
WVEC-TV	13	HAMPTON, VA	BLCT-19990811LF	74167
WWAY(TV)	3	WILMINGTON, NC	BLCT-20031021AFG	12033
WYDO(TV)	14	GREENVILLE, NC	BLCT-19920709KF	35582



Grade B Contours
Intersecting Tidewater DMA

WAVY-TV
 WBOC-TV
 WCVE-TV
 WCVW(TV)
 WFXI(TV)
 WGNT(TV)
 WHRO-TV
 WITN-TV
 WMDT(TV)
 WNCT-TV
 WPXV(TV)
 WRIC-TV
 WRLH-TV
 WSKY-TV
 WTKR(TV)
 WTVR-TV
 WTVZ-TV
 WUND-TV
 WUNP-TV
 WUPV(TV)
 WVBT(TV)
 WVEC-TV
 WWBT(TV)

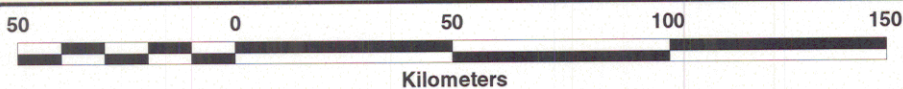
Norfolk - Portsmouth - Newport News, VA DMA
"Tidewater"

WUND-TV

FIGURE 2
RECEPTION SERVICES
NORFOLK - PORTSMOUTH - NEWPORT NEWS, VA DMA

prepared September 2004 for
Hampton Roads Educational
Telecommunications Association, Inc.

Cavell, Mertz & Davis, Inc.
Manassas, Virginia



Grade B Contours
Intersecting DMA

WAVY-TV
 WBTW(TV)
 WCTI-TV
 WECT(TV)
 WEPX(TV)
 WFXI(TV)
 WGNT(TV)
 WHRO-TV
 WITN-TV
 WLFL(TV)
 WNCN(TV)
 WNCT-TV
 WXPX-TV
 WXPV(TV)
 WRAL-TV
 WRAY-TV
 WRAZ(TV)
 WRDC(TV)
 WRPX(TV)
 WSFX-TV
 WSKY-TV
 WTKR(TV)
 WTVB(TV)
 WTVZ-TV
 WUNC-TV
 WUND-TV
 WUNJ-TV
 WUNK-TV
 WUNM-TV
 WUNP-TV
 WUNU(TV)
 WUVC-TV
 WVBT(TV)
 WVEC-TV
 WWAY(TV)
 WYDO(TV)

Greenville - New Bern - Washington, NC DMA

WUND-TV

FIGURE 3
RECEPTION SERVICES
GREENVILLE - NEW BERN - WASHINGTON, NC DMA

prepared September 2004 for
 Hampton Roads Educational
 Telecommunications Association, Inc.

Cavell, Mertz & Davis, Inc.
 Manassas, Virginia

25 0 25 50 75
 Kilometers

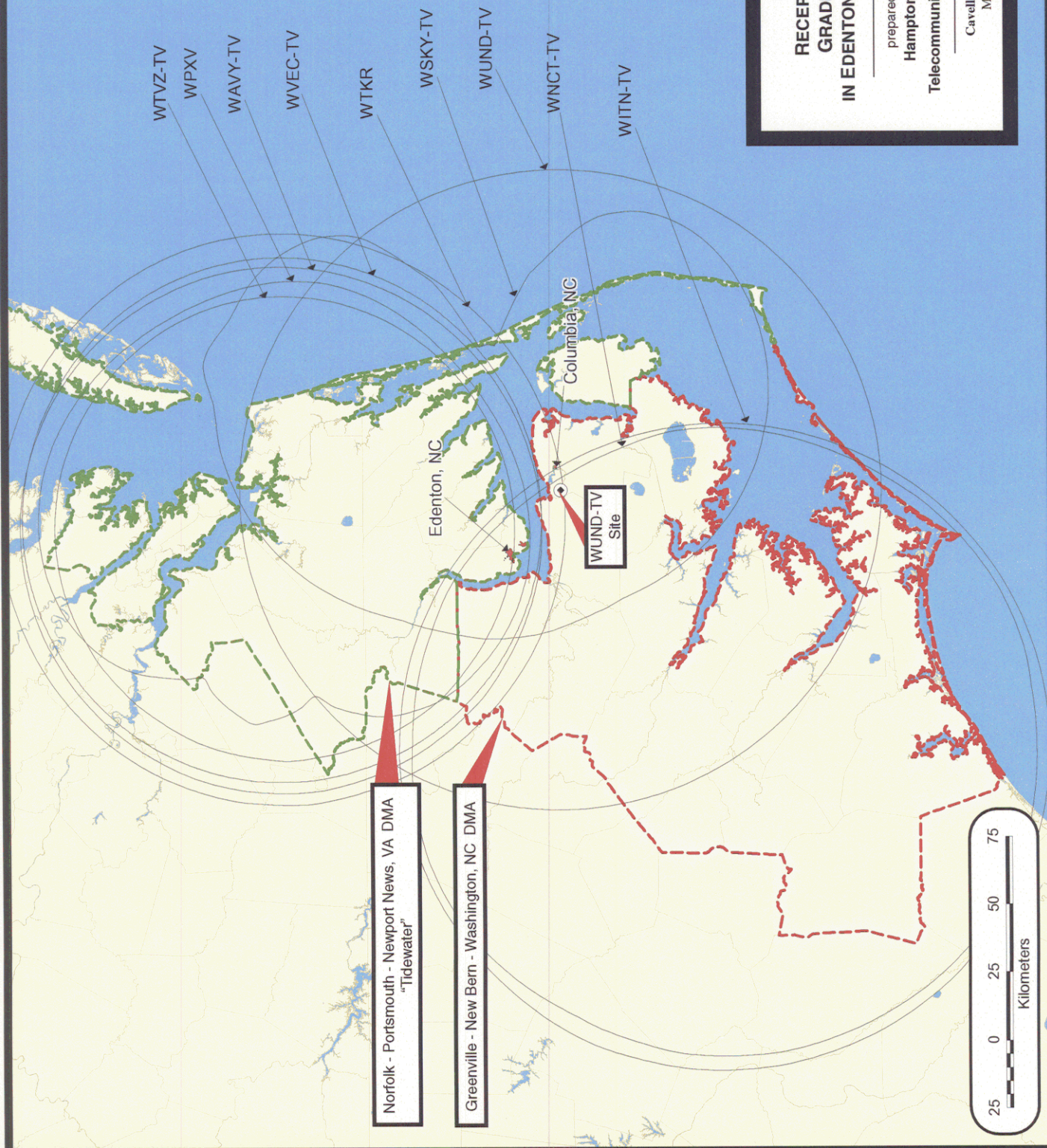


FIGURE 4
RECEPTION SERVICES
GRADE B CONTOURS
IN EDENTON AND COLUMBIA, NC

prepared September 2004 for
Hampton Roads Educational
Telecommunications Association, Inc.

Cavell, Mertz & Davis, Inc.
 Manassas, Virginia

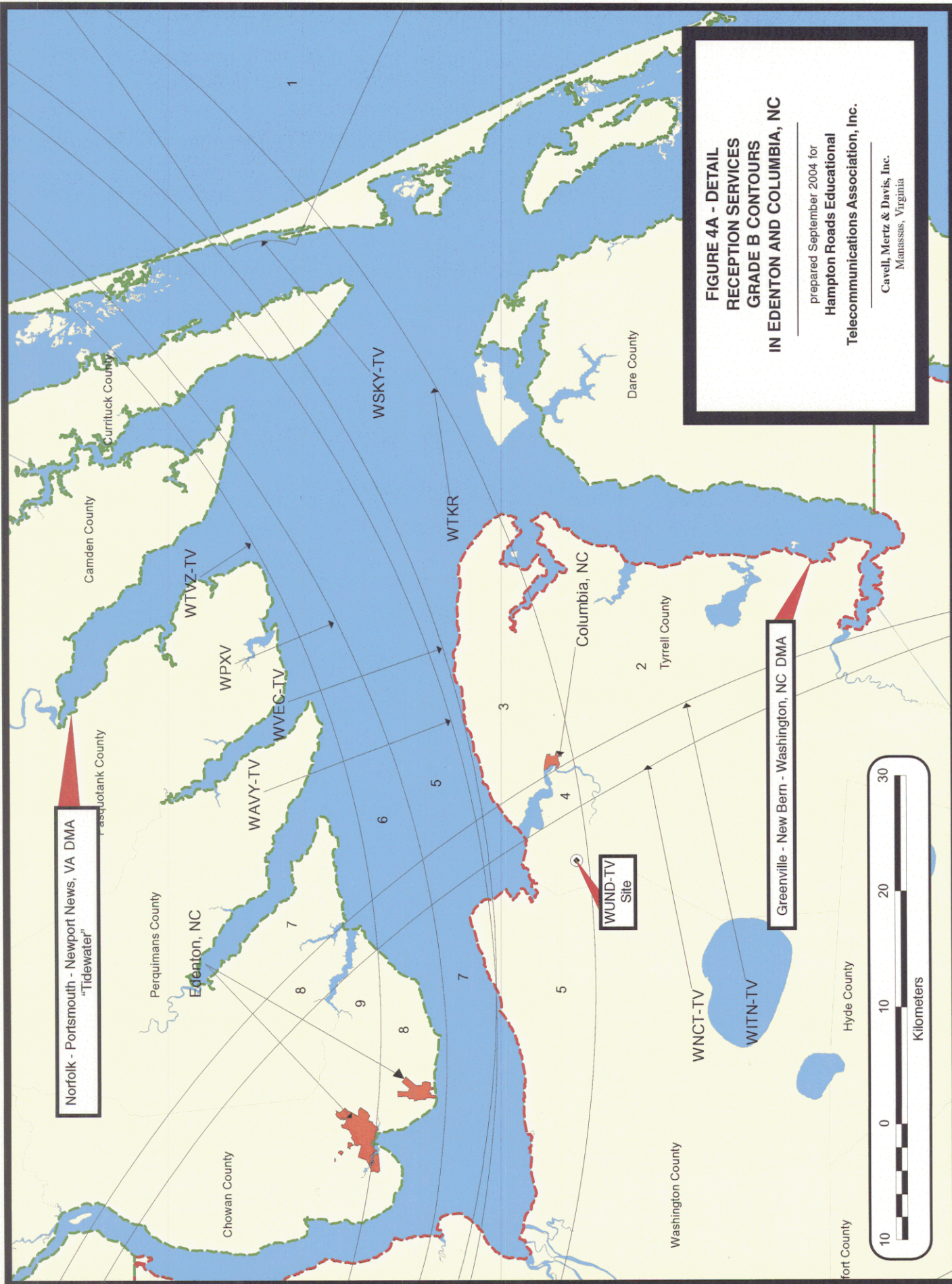


FIGURE 4A - DETAIL
RECEPTION SERVICES
GRADE B CONTOURS
IN EDENTON AND COLUMBIA, NC

prepared September 2004 for
 Hampton Roads Educational
 Telecommunications Association, Inc.

Cavell, Mertz & Davis, Inc.
 Manassas, Virginia

Norfolk - Portsmouth - Newport News, VA DMA
 "Tidewater"

WUND-TV
 Site

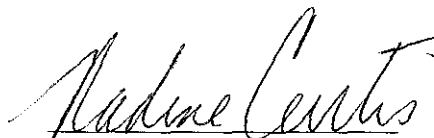
Greenville - New Bern - Washington, NC DMA

CERTIFICATE OF SERVICE

I, Nadine Curtis, hereby certify that copies of the foregoing Opposition to Petition for Change of Community of License have been served by Hand Delivery or by First Class United States Mail this 27th day of September, 2004, on the following:

Marcus W. Trathen
Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.
P.O. Box 1800
Raleigh, NC 27602

Barbara Kreisman, Chief*
Video Division, Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554


Nadine Curtis

* By Hand Delivery